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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

In re J.D., a Person Coming Under the
Juvenile Court Law.

2d Juv. No. B263850
(Super. Ct. No. 1436054)
(Santa Barbara County)

SANTA BARBARA COUNTY CHILD
WELFARE SERVICES,

Plaintiff and Respondent,

v.

FRANK D.,

Defendant and Appellant.

Frank D. ("Father") appeals an order of the juvenile court declaring that his minor son J.D. is adoptable and terminating his parental rights. (Welf. & Inst. Code, § 366.26, subd. (c)(1).)¹ We affirm.

BACKGROUND

Father and L.D. (Mother) adopted J.D. and Jose D. when J.D. was an infant. Mother abused Jose. She hit Jose, burned him, withheld food from him, made him sleep outside naked in a cage, and forced him to eat dog feces and dog food. J.D.

¹ All statutory references are to the Welfare and Institutions Code.

witnessed the abuse. Father knew about the abuse and did not interfere or protect his sons.

In April 2014, the Santa Barbara County Department of Child Welfare Services removed J.D. and Jose from the home and placed them in emergency shelter. The juvenile court detained the children and set a jurisdiction and disposition hearing. It ordered four hours of supervised visitation per week with Father. In May 2014, the district attorney filed a felony child abuse complaint against Mother.

After a contested jurisdiction hearing in June 2014, the juvenile court sustained allegations that J.D.'s sibling was abused or neglected and there was a substantial risk that J.D. would also be abused and neglected; that Father and Mother willfully failed to protect or provide for J.D.; and that Father knew or should have known that his sons were in danger of being subjected to acts of cruelty and failed to protect them.

After a contested disposition hearing in August 2014, the juvenile court found by clear and convincing evidence that the allegations are true. It found that Mother physically and psychologically abused Jose and that Father "knew of and actually witnessed some of the physical abuse and did nothing to protect his son." The court said Father "shares responsibility for the abuse," and that he actually "did know of the abuse and impliedly consented to it by witnessing much of it and not acting to protect his son." The court expressed concern that, after posting bail for Mother, Father said, "I want my boys back and [to] have my family back to normal." In the court's view, "What happened in that house is not normal."

The juvenile court bypassed reunification services to both parents. (§ 361.5, subd. (b)(6).) It found, "There is absolutely no possibility that [J.D.] and Jose would benefit by providing reunification services to their abusive parents."

Father appealed from the jurisdiction and disposition orders. (*In re Jose D. et al.* (Dec. 10, 2014, No. B259592).) We dismissed his appeal. (§ 366.26, subd. (1)(1); *In re Tabitha W.* (2006) 143 Cal.App.4th 811, 815-816.)

J.D. remained in emergency shelter from April 2014 through January 2015. He suffers from anxiety and he engaged in sexualized behavior with his peers. A psychologist explained that J.D. sought connection and security. He was not a sexual deviant. But his behavior made it difficult to find a foster placement because it was determined that he should not be placed with other children. J.D. had no other social or developmental difficulties and was a likeable child who was very eager to please adults. Father consistently visited J.D. and behaved appropriately and thoughtfully with him. J.D. enjoyed the visits.

In February 2015, J.D. was placed in a foster home with no other children. The foster parents wished to adopt him. Father retained a psychologist, Treon Hinmon, PhD., who conducted a bonding study concerning the father-son relationship.

In March 2015, the juvenile court conducted a hearing regarding a permanent plan for J.D. (§ 366.26.) The prospective adopted parents were committed to J.D. and he was accepting them as parents.

Hinmon testified that J.D. and Father have a unique and very secure bond. He said that J.D. benefits from Father's attention and mentoring. Hinmon observed that J.D. engaged with Father, was happy to see him, sought his approval, and responded to his guidance. They were very involved with each other. J.D. said it was "boring" when he did not have visits with Father, a word that Hinmon said can indicate sadness or depression when used by a child. Hinmon said that severing the bond between Father and J.D. would be detrimental to J.D.

Hinmon testified that J.D. is talkative, precocious, gregarious, friendly, handsome, and smart. J.D. has no cognitive or physical disabilities. But J.D. is emotionally withdrawn and guarded about his feelings. He needs a strong male figure as a role model and mentor. Hinmon said J.D. needs a care provider with whom J.D. can talk and be vulnerable. He said J.D. is capable of forming attachments with others.

Hinmon testified that he was aware that Father remained committed to Mother and that Father believed the abuse allegations were a misunderstanding.

Hinmon did not know the juvenile court found that Father knew of the abuse and failed to protect his sons, or that J.D. told a social worker that Father knew about the abuse. Hinmon said that if a child reports abuse and a parent minimizes it or does not believe it, this can undermine the child's sense of safety and trust.

The shelter care provider with whom J.D. lived for nine months testified that J.D. does very well in school, gets along with other children, and is social, happy and engaging. She said J.D. shares his feelings and affection with others. He responds well to guidance. She said J.D. did not ask to see Father between visits and did not cry after visits. She said J.D. has no behavioral issues except his sexualized behavior which is improving. The most recent incident occurred in December 2014 when he and another boy in the shelter mutually fondled each other. The other boy was removed from the shelter which made J.D. very sad.

Father testified that he has a positive relationship with his sons. He said that he was home in the evenings and on the weekends before the boys were removed. Two or three times a week he spent time with them before they fell asleep and prayed with them. He said they were all sports oriented and enjoyed activities together. He described positive visits with J.D.

The juvenile court found by clear and convincing evidence that J.D. is adoptable. It said J.D. is "not a child who would be hard to place" if the current placement did not result in adoption. The court found that a "special" father-son relationship exists, but the relationship does not outweigh the benefits of adoption. The court terminated Father and Mother's parental rights.

DISCUSSION

Substantial evidence supports the juvenile court's determination that Father did not establish extraordinary circumstances that would make adoption detrimental to J.D.. (§ 366.26, subd. (c)(1); *In re Autumn H.* (1994) 27 Cal.App.4th 567, 576 [substantial evidence review].)

When a child cannot be returned to his parents, adoption is the preferred permanent plan. Section 366.26, subdivision (c)(1)(B) requires the juvenile court to terminate parental rights if it finds by clear and convincing evidence that a child is likely to be adopted, unless "[t]he court finds a compelling reason for determining that termination would be detrimental to the child" due to an enumerated statutory exception. The "beneficial parental relationship" exception of section 366.26, subdivision (c)(1)(B)(i) requires a showing that the parent has "maintained regular visitation and contact with the child and the child would benefit from continuing the relationship." To satisfy the exception, the relationship must "promote[] the well-being of the child to such a degree as to outweigh the well-being the child would gain in a permanent home with new, adoptive parents." (*In re Autumn H.*, *supra*, 27 Cal.App.4th 567, 575.)

The existence of a beneficial relationship is determined by the age of the child, the portion of the child's life spent in parental custody, the quality of interaction between parent and child, and the child's particular needs. (*In re Amber M.* (2002) 103 Cal.App.4th 681, 689.) Here, J.D. spent seven of his eight years with Father. The court found they formed a bond in J.D.'s "formative" years. But that was not a safe or secure period of J.D.'s life. After removal, J.D. and Father had positive interactions during their supervised visits, as the juvenile court recognized. But Father did not accept J.D.'s report of abuse and he remained committed to Mother. Hinmon said that if a child discloses abuse and a parent takes no responsive action, "it can cause that child's sense of safety to be undermined." He said that a parent's continued commitment to an abuser "could have an impact on [the child's] sense of vulnerability and on his capacity to trust." Hinmon testified that J.D. had a particular need for a male role model with whom J.D. could trust and be vulnerable. J.D. was capable of forming new attachments with adoptive parents.

Adoption is the preferred plan because it gives a child a chance at a full emotional commitment by a responsible caretaker. (*In re Celine R.* (2003) 31 Cal.4th

45.) Substantial evidence supports the juvenile court's determination that J.D.'s need for such commitment was not outweighed by the benefits of his relationship with Father.

DISPOSITION

The order is affirmed.

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GILBERT, P.J.

We concur:

YEGAN, J.

PERREN, J.

Arthur A. Garcia, Judge

Superior Court County of Santa Barbara

Matthew I. Thue, under appointment by the Court of Appeal, for
Defendant and Appellant.

Michael C. Ghizzoni, County Counsel, Toni Lorien, Senior Deputy, for
Plaintiff and Respondent.